

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 August 2021
(Also the agenda for the Mayoral Committee Meeting : 24 August 2021)**

**8.
COVID-19 FINANCIAL RELIEF ARRANGEMENTS
EXEMPTION FROM PAYMENT OF RENTAL FOR THE MONTH OF JULY 2021
(ADJUSTED LOCKDOWN LEVEL 4) – SPECIFIC TENANTS**

7/2/3/1

A Le Roux

Manager: Property Administration

13 July 2021

(028) 316-5623

1. Executive Summary

The purpose of the report is to present Council with a recommendation to exempt specific tenants who are leasing the municipal property for restaurant purposes (as indicated on the attached Annexure A) from the payment of rental for the month of July 2021, as they could not use their municipal leased premises effectively during the Adjusted Alert Level 4 disaster level 4 which was declared on 27 June 2021 to commence on 28 June 2021 and as extended on 11 July 2021 (hereinafter referred to as, “adjusted lockdown level 4”).

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate Finance
Department Revenue

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

Administration of Immovable Property Policy of the Overstrand Municipality, as amended
Local Government: Municipal Finance Management Act, Act 56 of 2003 (“MFMA”)

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6. Background/Discussion/Evaluation/Conclusion

Background

The National State of Disaster was declared in March 2020 with the last extension thereof until 15 August 2021.

As a result of the third wave being entered, new Regulations were published on 27 June 2021, but taking effect from 28 June 2021, which put South Africa in an adjusted level 4 lockdown for two weeks until 11 July 2021. The adjusted level 4 provides, amongst other things, that:

- Restaurants and other in-house dining facilities may only operate for off-site consumption of food (take aways);
- Restaurants may not serve alcoholic beverages;
- Closing time for establishments like restaurants is 20:00; and
- Gatherings are generally prohibited, unless exempted.

On 11 July 2021, amended Regulations were published that extended the adjusted level 4 lockdown until 25 July 2021. In terms of the amended Regulations, a maximum of 50 people are allowed to eat at a restaurant at a time and if the venue is too small to accommodate 50 people with sufficient distance, the restaurant may only use 50% of its available floor space, however they may still not serve alcohol and the curfew remains in place.

These adjusted lockdown level 4 Regulations have, and will continue to, prevent certain tenants of the Overstrand Municipality from using the leased premises fully as set out in their respective lease agreements. Furthermore, the 'third wave' and adjusted level 4 lockdown Regulations will have a significant impact on the restaurant industries' trading capacity and earning ability.

Discussion

A: EXEMPTION

The Overstrand Municipality has numerous lessees who have concluded lease agreements for restaurant purposes who are directly affected by the Regulations.

This is not the first time that restaurants were not able to trade at their full capacity. Previously the Regulations placed South Africa into a hard lockdown, which included the suspension of the operation of restaurants with the effect that no restaurant could trade from 25 March 2020 and could initially only resume trade as a take-away institution from 29 April 2020.

Taking this into consideration, Council previously approved an exemption from the payment of rental for, amongst others, restaurants for the

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months of April, May and June 2020 and then on 30 September 2020 Council again approved an exemption from the payment of rental for July 2020, August 2020 and September 2020.

Under the new adjusted level 4, many restaurants were not open for take-aways from 28 June 2021 until 11 July 2021, because they operate at a loss when they may only do take-away services. This is also due to the restaurants purposefully not being set-up as take away establishments such as KFC and McDonalds where drive throughs and take-away packaging is part of their normal operation. The Overstrand sea-view and coastal ambience created by our restaurants are part of the main attraction of our restaurants tenants and removing same removes a large part of their customer base. Simply put, take-aways are not their *modus operandi* as it does not make business sense for them. The restaurants that were open and providing take-aways were not seeing their usual number of customers, even for the slow winter months.

The number of potential customers is also limited by the curfew for establishments being until 20:00 and that of citizens until 21:00 for all citizens. Further potential sales are limited by the fact that no alcohol may be served by restaurants and the decrease in visitors to the Overstrand area in general as a result of the general guidelines that travel and all forms of gatherings should be avoided, apart from the blanket restriction on other forms gatherings. All these factors severely decrease the restaurants' potential sales and customer base.

B: EFFECT IF NO EXEMPTION IS GRANTED

The likely effect(s) should the payment of rental exemption as sought in this report not be granted was outlined in a report to Council on 30 September 2020. As it was then and as it is now again, there is a reasonable prospect that the detrimental consequences may materialise. Therefore, the Property Administration Department believes it is necessary in these circumstances to repeat them to Council.

1. Consequences of termination of lease agreements

It is a standard term of all lease agreements that the Municipality may cancel a lease agreement where the tenant has failed to pay the rental amount and proceed with any collections. Should rental remain unpaid, the Municipality may be left with no alternative but to enforce these lease cancellation provisions leaving the properties vacant.

Vacant properties can become a huge administrative burden to the Municipality as from past experience it is known that vacant properties are usually targets for vandalism and theft. Having tenants in premises

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eases the burden of protecting and securing the leased property of the Municipality.

Section 63 of the MFMA stipulates as follows:

*“63.(1) The accounting officer of a municipality is responsible for the management of
(a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and
(b) the liabilities of the municipality.”*

The properties are assets of the Overstrand Municipality and the accounting officer will be obligated to incur costs in safeguarding these assets if they are left vacant.

It is required by the Administration of Immovable Property Policy of the Municipality as well as the lease agreements entered into, that tenants are responsible for the maintenance and upkeep of the properties they lease. Should the lease agreements be cancelled the Overstrand Municipality will have to resume the maintenance obligations of those properties. This will result in substantial administrative duties and maintenance costs and expenses.

Should the above circumstances arise, further costs for the Municipality would include putting making the lease of the restaurants available via a competitive bidding process which requires advertising at the Municipality's cost as well as many human resource commitments from various departments.

2. Closing of businesses

Restaurants and the South African economy itself have hardly begun recovering from the effects of the first and second waves which had similar Regulations. Should they remain liable to pay their rental amounts at this time and stage, this may be the tipping point for many businesses that are already standing on the proverbial edge of closure. It is a reality faced by many businesses that have not been able to generate an income sufficient to keep them afloat. It should be noted that the pandemic and the resulting Regulations are the reasons for the businesses' dismal income, as these businesses have been trading profitably for the most part of their lease durations and where they have not made their payments, they have usually been able to recover in the next busy month or so. These are circumstances beyond the normal and expected slow trading months.

The detrimental effects the closure of businesses will have are almost self-explanatory. Restaurants are an integral part of the tourism industry

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of the Overstrand region. The ripple effect restaurant closures will have will negate the efforts made by the other stakeholders in the tourism industry. Furthermore, restaurant closures may result in a decrease of visitors to the Overstrand region, which would have resulted in a decrease of spending within the Overstrand region.

The closure of businesses, regardless of how big or small, includes job losses. Unemployment is a major threat to the economy and state of South Africa and must be prevented where possible. An increase in crime is a well-known effect of unemployment within an area. An increase in hunger and crime is not something that the Municipality can afford. A job loss can result in families being placed into poverty, where they previously lived beyond the so-called bread line.

The impact job losses have on a community must not be understated, the ripple effects of crime, poverty, increased need for subsidised living and the decrease in spending within a community can eradicate years of socio-economic advancement within less than a couple of months. Higher unemployment places a larger burden on the Overstrand Municipality as it will need to subsidise the poor and at the same time it diminishes the amount of revenue it can collect for rates and services in the long term.

Evaluation

Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply to this report:

Paragraph 25(a): The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 21, 25, 26 and 58 to 62, shall not (a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.

In this event, the public interest and the plight of the poor (insofar the employees/traders) demand and justify the request for an exemption from the payment of rental for a limited time-period, being the period which the adjusted lockdown level 4 is in place. After the mentioned time, the normal rental as agreed upon in each lease agreement will be applicable. This is not an alienation / transfer of a municipal asset and therefore the reference to Regulation 13(2) is not applicable here.

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Conclusion

Taking into consideration the above and the loss of income suffered by the restaurants, it is recommended that they are exempted from having to pay rental for the month of July 2021. The initial period of the adjusted level 4 with its Regulations were from 27 June 2021 until 11 July 2021 and has been extended to 25 July 2021, albeit being slightly amended for the latter period. Accordingly, the exemption sought is for the month of July 2021, as the period of effect by the Regulations is almost one entire calendar month (27 June 2021 until 25 July 2021) and it is administratively easier to exempt the specific tenants for the specific month as opposed to calculating and applying an exemption for two parts of two different months from two different municipal financial years.

It is in the interest of the Overstrand Municipality that, bearing sustainable revenue generation models in mind, the specific lessees set out in Annexure A whose business has been this directly affected be offered relief.

7. Financial Implications

A total loss in rental income for the month of July 2021 will amount to approximately R170,877.39 (VAT Excluded) (one hundred and seventy thousand eight hundred and seventy-seven Rand and thirty-nine Cents).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: List of tenants to be exempted

RECOMMENDATION TO THE COUNCIL:

that the exemption from the payment of rental for the month of July 2021 in relation to the following tenants of the Municipality **be approved:**

- (a) Bientang's Cave CC;
- (b) CJ & JC Partnership;
- (c) De Vette Mossel;

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- (d) Tasoclox (Pty) Ltd (Dutchies);
- (e) Tasoclox (Pty) Ltd (Fick's Pool);
- (f) Ingwesec (Pty) Ltd;
- (g) Kee Properties Investments (Pty) Ltd (Oskar's);
- (h) Kee Properties Investments (Pty) Ltd (Marine Drive Cafes);
- (i) Route 44 Reservations (Pty) Ltd;
- (j) Shoprite Checkers (Pty) Ltd;
- (k) Joshgro Investments 9 (Pty) Ltd;
- (l) Stonewater Holdings (Pty) Ltd;
- (m) Van Niekerk, Shawn; and
- (n) Vincenzo Romano.

RESPONSIBLE OFFICIAL :

**R MARINUS
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

30 SEPTEMBER 2021

TARGET DATE TO INFORM APPLICANT :

1 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

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A Le Roux

Manager: Property Administration

13 July 2021

(028) 316-5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 AUGUST 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the exemption from the payment of rental for the month of July 2021 in relation to the following tenants of the Municipality **be approved**:

- (a) Bientang's Cave CC;
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- (c) De Vette Mossel;
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TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A

Nr.	Name of Tenant	Account Nr.
1.	BIENTANGS'S CAVE CC	200261190014
2.	CJ & JC PARTNERSHIP	900000356197
3.	DE VETTE MOSSEL	To be Determined
4.	TASOCLOX (PTY) LTD	900000503681
5.	TASOCLOX (PTY) LTD	900000539189
6.	INGWESEC (PTY) LTD	900000550700
7.	KEE PROPERTIES INVESTMENTS (PTY) LTD	900000447031
8.	KEE PROPERTIES INVESTMENTS (PTY) LTD	900000447567
9.	ROUTE 44 RESERVATIONS (PTY) LTD	318550400000
10.	SHOPRITE CHECKERS (PTY) LTD	900000158267
11.	JOSHGRO INVESTMENTS 9 (PTY) LTD	900000206157
12.	STONEWATER HOLDINGS (PTY) LTD	900000535257
13.	VAN NIEKERK, SHAWN	900000478864
14.	VINCENZO ROMANO	200208130008